

REMARKS

Applicant is in receipt of the Office Action mailed October 4, 2004. Claims 1-69 were pending in the application prior to the Present Amendment. Applicant cancels claim 41 without prejudice or disclaimer to the subject matter recited therein. Applicant has amended various of the claims and submits new claims to more fully and completely claim Applicant's invention. Claims 1-40 and 42-81 are pending in the Present Application. Reconsideration of the present case is earnestly requested in light of the following remarks.

§102 Rejections

Claims 1-11, 13, 15-69 were rejected under 35 U.S.C. 102(e) as being anticipated by Petite et al. (U.S. Patent No. 6,437,692, hereinafter "Petite"). This rejection is respectfully traversed.

As the Examiner is certainly aware, anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). The identical invention must be shown in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicant respectfully submits that Petite nowhere teaches or suggests ". . .the second device receiving, from the network, an instrument driver which is usable by the second device to communicate with the traditional instrument. . ." as currently recited by claim 1.

The Office Action asserts that Petite teaches ". . .downloading an instrument driver for the first traditional instrument from another device to the first device via the network (column 2, lines 48-52, column 3, lines 20-29, column 6, lines 15-25, column 7,

lines 41-45, column 10, lines 12-17, column 11, lines 14-17, 33-65, column 12, lines 4-12)” (*emphasis added*).

Applicant respectfully submits that Petite nowhere teaches or suggests receiving an instrument driver from a network. Furthermore, Petite nowhere teaches or suggests that the instrument driver is usable to communicate with and/or control a traditional instrument.

Applicant respectfully submits that instrument drivers are known in the art:

The application programs mentioned above typically operate in conjunction with one or more instrument drivers to interface to actual physical instruments. For example, the LabVIEW and LabWindows application software each include instrument libraries comprising drivers for more than six hundred GPIB, VXI, and RS-232 instruments from numerous manufacturers. The instrument drivers are designed to reduce a user's application development time by providing intuitive high level functions that relieve the user of complex low level instrument programming. (Specification page 5, lines 16-22) (*emphasis added*)

Applicant respectfully submits that various embodiments and/or examples of various instrument drivers are described throughout Applicant's Specification. For example:

The server device may include an instrument server program executable within the server device. The instrument server may connect to and communicate with the one or more instruments through the instrumentation bus. In one embodiment, the instrument server may communicate to an instrument through an instrument driver

associated with the instrument. The instrument driver may perform all direct communications to the instrument over the instrumentation bus. In one embodiment, the instrument driver may provide an application programming interface (API) to the instrument server, and the instrument server may use the API to communicate with the instrument through the instrument driver. (Specification page 9, lines 1-9) (*emphasis added*)

Rather, Petite teaches and discloses formatting data and/or transmitting data to/from a network in at least column 2, lines 48-52, column 3, lines 20-29, column 6, lines 15-25, column 7, lines 41-45, column 10, lines 12-17, column 11, lines 14-17, 33-65, column 12, lines 4-12.

In contrast, claim 1 as currently recited includes in pertinent part, “. . .the second device receiving from the network an instrument driver which is usable by the second device to communicate with the traditional instrument. . .”. Petite nowhere teaches or suggests this feature. Thus, claim 1 is patentably distinguished over Petite. Accordingly, Applicant respectfully submits that, at least for one or more reasons presented, claim 1 and those dependent therefrom are allowable.

Applicant respectfully submits that Petite nowhere teaches or suggests “. . .transmitting to a network a request for an instrument driver which corresponds to the instrument information, wherein the instrument driver is usable by the first device to communicate with the first traditional instrument. . .” and “. . .receiving the instrument driver from the network. . .” as currently recited by claim 23. Thus, claim 23 is patentably distinguished over Petite. Accordingly, Applicant respectfully submits that, at least for one or more reasons presented, claim 23 and those dependent therefrom are allowable.

Applicant respectfully submits that Petite nowhere teaches or suggests “. . .receiving identification information from the traditional instrument. . .”, “. . .transmitting to the Internet a request for an instrument driver, wherein the instrument driver is usable by the first device to communicate with the traditional instrument, wherein the request is based on the identification information. . .”, and “. . .receiving the instrument driver. . .” as currently recited by claim 33. Thus, claim 33 is patentably distinguished over Petite. Accordingly, Applicant respectfully submits that, at least for one or more reasons presented, claim 33 and those dependent therefrom are allowable.

Applicant respectfully submits that Petite nowhere teaches or suggests program instructions executable to “. . .receive an instrument driver from the network. . .” and “. . .store the instrument driver in the memory. . .” as currently recited by claim 38. Thus, claim 38 is patentably distinguished over Petite. Accordingly, Applicant respectfully submits that, at least for one or more reasons presented, claim 38 and those dependent therefrom are allowable.

Applicant respectfully submits that Petite nowhere teaches or suggests program instructions executable to “. . .receive, from the second device, an instrument driver which is associated with the traditional instrument, wherein the instrument driver comprises program instructions which are executable by the processor to communicate with the traditional instrument. . .” as currently recited by claim 45. Thus, claim 45 is patentably distinguished over Petite. Accordingly, Applicant respectfully submits that, at least for one or more reasons presented, claim 45 and those dependent therefrom are allowable.

Applicant respectfully submits that Petite nowhere teaches or suggests program instructions executable to “. . .send an instrument driver to the second device, wherein the instrument driver is usable by the second device to communicate with the first traditional instrument. . .” as currently recited by claim 52. Thus, claim 52 is patentably distinguished over Petite. Accordingly, Applicant respectfully submits that, at

least for one or more reasons presented, claim 52 and those dependent therefrom are allowable.

Applicant respectfully submits that Petite nowhere teaches or suggest the combination of features as currently recited in claim 56:

56. A system comprising:
- a first device operable to couple to a network and to an instrumentation bus;
 - a second device operable to couple to the network;
 - one or more traditional instruments operable to couple to the instrumentation bus, wherein the one or more traditional instruments do not include inherent Internet capabilities;
 - first program instructions executable within the first device to:
 - detect the one or more traditional instruments coupled to the instrumentation bus;
 - provide instrument information of the one or more traditional instruments to the second device via the network; and
 - receive an instrument driver from the network;
 - second program instructions executable within the second device to:
 - display the instrument information on the second device;
 - select a first traditional instrument of the one or more traditional instruments from the displayed instrument information;
 - send the instrument driver to the first device via the network, wherein the instrument driver is usable by the communicate with the first traditional instrument; and

send requests to the first device via the network to monitor and control the first traditional instrument from the second device.

Thus, claim 56 is patentably distinguished over Petite. Accordingly, Applicant respectfully submits that, at least for one or more reasons presented, claim 56 and those dependent therefrom are allowable.

Applicant respectfully submits that Petite nowhere teaches or suggests “. . .the second device receiving, from the network, an instrument driver which is usable by the second device to communicate with the traditional instrument. . .” as currently recited by claim 65. Thus, claim 65 is patentably distinguished over Petite. Accordingly, Applicant respectfully submits that, at least for one or more reasons presented, claim 65 and those dependent therefrom are allowable.

Applicant respectfully submits that Petite nowhere teaches or suggests “. . .transmitting to a network a request for an instrument driver which corresponds to the instrument information, wherein the instrument driver is usable to communicate with the first traditional instrument. . .” and “. . .receiving the instrument driver from the network. . .” as currently recited by claim 68. Thus, claim 68 is patentably distinguished over Petite. Accordingly, Applicant respectfully submits that, at least for one or more reasons presented, claim 68 and those dependent therefrom are allowable.

Applicant respectfully submits that Petite nowhere teaches or suggests “. . .receiving, from the network, an instrument driver which is associated with the traditional instrument, wherein the instrument driver comprises program instructions which are executable by the first device to communicate with the traditional instrument. . .” as recited by claim 70. Thus, claim 70 is patentably distinguished over Petite. Accordingly, Applicant respectfully submits that, at least for one or more reasons presented, claim 70 and those dependent therefrom are allowable.

Applicant respectfully submits that Petite nowhere teaches or suggests program instructions executable to “. . .receive, from the network, a first instrument driver which is associated with the first traditional instrument, wherein the first instrument driver comprises program instructions which are executable by the processor to communicate and/or control the first traditional instrument. . .” as recited by claim 74. Thus, claim 74 is patentably distinguished over Petite. Accordingly, Applicant respectfully submits that, at least for one or more reasons presented, claim 74 and those dependent therefrom are allowable.

Removal of the §102 rejections is respectfully requested.

§103 Rejections

Claims 12 and 14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Petite in view of Reimer (U.S. Patent No. 6,484,088). This rejection is respectfully traversed.

Applicant respectfully submits that neither Petite nor Reimer teaches or suggests receiving an instrument driver from a network. Furthermore, neither Petite nor Reimer teaches or suggests that the instrument driver is usable to communicate with and/or control a traditional instrument.

Applicant respectfully submits that Reimer describes “A system for monitoring fuel consumption and optimization refueling of a vehicle” (Reimer Abstract). Reimer further teaches and discloses “More particularly, the present invention relates to a system for optimizing refueling of a vehicle, reducing refueling fraud, and providing enhanced fuel information” (Reimer col. 1, lines 9-12).

Reimer proceed to teach and disclose that drivers, human beings, of vehicles are generally responsible for maintaining logs for “the amount of fuel purchased, the cost of the fuel, and the mileage traveled between refueling stops” (Reimer col. 1, 21-26). Reimer further teaches and discloses: “Drivers may forget to make log entries or enter information incorrectly. Further, drivers are likely to refuel in random ways. Some

drivers may refuel when the fuel level reaches one level such as one-quarter of a tank, others when the level reaches some other level such as one-eighth of a tank. Drivers are also unlikely to have current fuel price information at refueling stations along their route. Without this information, fuel is likely to be purchased at a price that is higher than the lowest available price” (Reimer col. 1, lines 29-37).

Reimer describes a mechanized system which may abate or mitigate various shortcomings of these human being drivers: “Accordingly, there is a need to provide a system that monitors fuel consumption, provides fuel consumption information, and makes refueling decisions for the driver to optimize fuel purchasing and consumption. The present invention provides a system for monitoring fuel consumption and optimizing refueling of a vehicle” (Reimer col. 1, lines 55-60) (*emphasis added*).

Examiner asserts that Reimer’s col. 4, lines 43-59 teaches the features of claim 12. Applicant respectfully submits that Reimer’s col. 4, lines 43-59 teach communicating “. . . information such as fuel quantity, location, fuel economy, and fuel tank size to a fuel optimization server 41. . .” through various networks.

In contrast, Applicant invention as currently recited by claim 12 includes “The method of claim 10, wherein, prior to the instrument server accessing the instrument driver, the method further comprises downloading the instrument driver from a third device to the second device via the network (*emphasis added*).” Neither Petite nor Reimer teaches or suggests this feature. Thus, Applicant respectfully submits that claim 12 is patentably distinguished over both Petite and Reimer, taken both singly and in combination. Accordingly, Applicant respectfully submits that, at least for one or more reasons presented, claim 12 is allowable.

The Office Action cites various of the dependent claims as being rejected under 35 U.S.C. 103. Various of the independent claims have been amended to overcome rejections under 35 U.S.C. 102. Applicant also respectfully submits that various of the independent claims are nonobvious and are allowable, as well. Applicant respectfully submits: “If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed.

Cir. 1988)” as stated in the MPEP §2143.03. Accordingly, Applicant respectfully submits that claims 1-40 and 42-81 are allowable.

Applicant also respectfully submits that there is no teaching, suggestion, or motivation to combine Petite and Reimer in either of the references or in the prior art. As held by the U.S. Court of Appeals for the Federal Circuit in *Ecolchem Inc. v. Southern California Edison Co.*, an obviousness claim that lacks evidence of a suggestion or motivation for one of skill in the art to combine prior art references to produce the claimed invention is defective as hindsight analysis. Furthermore, Applicant respectfully submits that it is nonobvious to combine Petite and Reimer.

Furthermore, the showing of a suggestion, teaching, or motivation to combine prior teachings “must be clear and particular. . .Broad conclusory statements regarding the teaching of multiple references, standing alone, are not ‘evidence’.” *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999). The art must fairly teach or suggest to one to make the specific combination as claimed. That one achieves an improved result by making such a combination is no more than hindsight without an initial suggestion to make the combination. Applicant respectfully submits that there is no suggestion in the prior art for combining Petite and Reimer, and that even were the two references combined, they would not produce the features of claims 1-40 and 42-81.

Removal of the §103 rejections is respectfully requested.

CONCLUSION

Applicant submits the application is in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5150-46100/JCH.

Also enclosed herewith are the following items:

☒ Return Receipt Postcard

Respectfully submitted,



Jeffrey C. Hood
Reg. No. 35,198
ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin, Kowert & Goetzel PC
P.O. Box 398
Austin, TX 78767-0398
Phone: (512) 853-8800
Date: 1/10/2005 JCH/IMF